

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD C HAYES,

Plaintiff,

V.

STATE OF WASHINGTON,
DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

CASE NO. 3:16-CV-05095-BHS-DWC

ORDER

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Plaintiff filed a “Motion to File Objection to Defendants Reply,” wherein he responds to Defendants’ Supplemental Reply. Dkt. 106. Plaintiff also filed a “Motion to Submit Supplemental Declaration with Plaintiff’s Reply,” which is a declaration filed in support of his response to Defendants’ Supplemental Reply. Dkt. 105. The Court interprets Plaintiff’s Motions (hereinafter “Motions to File Surreply”) as a request to file a surreply to Defendants’ Supplemental Reply.

1 Defendants Richard Morgan, Steven Hammond, Elizabeth Suiter, Scott Frakes, Amy
2 Reyes, Dan Pacholke, Jeffery Uttecht, and the Department of Corrections (“DOC”) filed a
3 Motion for Judgment on the Pleadings (“Motion”) on September 1, 2016. Dkt. 61. Because
4 Plaintiff was given leave to file the Third Amended Complaint after Defendants filed the Motion,
5 the Motion was re-noted and the Court provided Defendants with an opportunity to file a
6 supplemental reply on or before December 2, 2016. Dkt. 93. Plaintiff was not given leave to file
7 a surreply.

8 Plaintiff now seeks permission to file a surreply and declaration. *See* Dkt. 105, 106. On
9 December 20, 2016, Defendants filed a Response to the Motions to File Surreply requesting the
10 Court deny Plaintiff’s Motions to File Surreply. Dkt. 107.

11 Pursuant to Local Rule CR 7(g)(2), surreplies are limited to requests to strike material
12 contained in or attached to a reply brief. “Extraneous argument or a surreply filed for any other
13 reason will not be considered.” *Id; see also Hernandez v. Stryker Corp.*, 2015 WL 11714363, at
14 *2 (W.D. Wash. Mar. 13, 2015). As surreplies are not considered by this Court, the Motions to
15 File Surreply (Dkt. 105, 106) are denied.¹

16 Dated this 4th day of January, 2017.

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18 _____
19 David W. Christel
United States Magistrate Judge

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22 ¹ The Court also notes, in ruling on a motion to dismiss, the court “may generally consider only allegations
23 contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.”
Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899 (9th Cir.2007) (citation and quotation marks
24 omitted). Therefore, the allegations contained in the proposed surreply and declaration would not be considered in
determining if Plaintiff has stated a claim for which relief can be granted.